

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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JANE DOE,

Case No. 1:15-cv-07726

Plaintiff,

-against-

**NOTICE OF MOTION TO  
BE SUBSTITUTED  
AS COUNSEL**

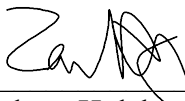
STEVEN KOGUT,

Defendant.  
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PLEASE TAKE NOTICE that upon the attached affirmation of Zachary Holzberg, Esq., and the attached Memorandum of Law, the law firm of Derek Smith Law Group, PLLC, and attorney Zachary Holzberg, Esq., hereby moves this Court, pursuant to Southern District of New York Local Civil Rule 1.4, for an order granting permission to be substituted as counsel of record for Plaintiff, Jane Doe.

Dated: October 21, 2016

New York, New York

  
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Zachary Holzberg, Esq.

TO: Chris Joslin (Via ECF)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
JANE DOE,

Case No. 1:15-cv-07726

Plaintiff,

-against-

**AFFIRMATION AND  
MEMORANDUM OF LAW IN  
SUPPORT OF MOTION TO  
WITHDRAW AS COUNSEL**

STEVEN KOGUT,

Defendant.  
-----X

I, Zachary Holzberg, Esq., declare under the penalty of perjury, that the following is true and correct:

1. Pursuant to Southern District of New York Local Civil Rule 1.4, the law firm of Derek Smith Law Group, PLLC, and attorney Zachary Holzberg, Esq., move this Court for an Order granting permission to be substituted as counsel of record for Plaintiff, Jane Doe.
2. Plaintiff consents to and wishes to substitute counsel of record, Derek Smith Law Group, PLLC, with the firm Campson & Campson.
3. “A review of the relevant case law demonstrates that documents in support of motions to withdraw as counsel are routinely filed under seal where necessary to preserve the confidentiality of the attorney-client relationship between a party and its counsel, and that this method is viewed favorably by the courts. *See, e.g., Weinberger v. Provident Life & Cas. Ins. Co.*, No. 97-cv-9262, 1998 WL 898309, at \*1 (S.D.N.Y. Dec.23, 1998)(“it is appropriate for a Court considering a counsel's motion to withdraw to consider in camera submissions in order to prevent a party from being prejudiced by the application of counsel

to withdraw.”); *Harrison Conference Servs., Inc. v. Dolce Conference Servs., Inc.*, 806 F.Supp. 23 (E.D.N.Y.1992).” *Team Obsolete Ltd. v. A.H.R.M.A. Ltd.*, 464 F.Supp.2d 164 (E.D.N.Y. 2006)

4. In light of the fact that there is no prejudice to the Parties by the substitution (There would be no delay in the proceedings); and the fact that Defendant has consented to said substitution, we respectfully request that the Court So Order the signed Substitution of Counsel Form previously filed with the Court.
5. In the event Your Honor requires further information on the subject, we respectfully request that Your Honor allow an *in camera* discussion with the Court to explain the reasons for the substitution. The reasons are of a sensitive nature and we respectfully request that they be discussed in private with Your Honor if so required.
6. Plaintiff agreed and consented to have the Derek Smith Law Group, PLLC, substituted as counsel by the law office of Campson & Campson. Please see the consent to change attorney form attached hereto. We write this motion in response to Your Honor’s Order that the parties must make a motion to withdraw rather than merely file the consent to change attorney form.
7. Plaintiff has consented to the substitution of counsel, our office has consented to the substitution of counsel, Paul Campson has consented to the substitution of counsel, and in fact Defendant’s counsel has consented to our substitution of counsel.
8. This Court has held that, “Under New York law, a client has the absolute right to change attorneys.” *Matter of First City Nat. Bank & Trust Co.*, 759 F. Supp. 1048, 1051 (S.D.N.Y. 1991)

9. Local Civil Rule 1.4 directs the Court to consider “the posture of the case, including the position, if any, on the calendar, and whether or not the attorney is asserting a retaining or charging lien.” In the case at hand, the parties are currently in the process of completing expert discovery and have a deadline of October 24, 2016 for the filing of the Joint Pre-Trial Order. Defense counsel has since requested an extension of this deadline in light of the two depositions remaining of the non-party witnesses. Your Honor indicated that a trial date would be set for November or December 2016.
10. In addition, Defendant’s expert, Dr. Jeffrey Brown, is conducting Plaintiff’s Independent Medical Examination at our office tomorrow. The deposition of Plaintiff’s expert, Dr. Gerald Bryant is scheduled to take place on October 27, 2016, and the outstanding depositions of two non-party witnesses (Mr. Kogut’s daughters) are scheduled to take place on October 28, 2016.
11. The Derek Smith Law Group, PLLC, is asserting a retaining or charging a lien in this matter, and such has been communicated to Plaintiff and the law firm of Campson and Campson has agreed to honor said lien.
12. Furthermore, the request to substitute counsel, on consent of all parties, does not prejudice this proceeding in any way. Mr. Campson is ready, willing, and able to complete all outstanding deadlines as well begin trial on the scheduled date.
13. It is not our intention to prejudice this matter in any way, and in the event Your Honor wishes to look beyond Plaintiff’s request to be represented by new counsel, we are ready and willing to discuss with Your Honor *in camera*.

**WHEREFORE**, we respectfully request that Your Honor grant the within Motion to withdraw as the counsel for the Plaintiff in this matter, as well as such other and further relief as may be just and proper.

Dated: October 21, 2016  
New York, N.Y.

Respectfully submitted,

/s/ Zachary Holzberg  
Zachary Holzberg, Esq.  
*Counsel for Plaintiff*

TO: Chris Joslin (Via ECF)